

Sup. Court, U.S.
FILED

05-435 AUG 23 2005

No. _____ OFFICE OF THE CLERK

In The
Supreme Court of the United States

JOHN F. THOMPSON, III,
Petitioner.

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI-
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Petition for Writ of Certiorari

Steven H. Sadow
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Counsel for Petitioner



QUESTION PRESENTED

1. **Whether the Eleventh Circuit Court of Appeals erred in refusing to consider remanding his sentence in light of *United States v. Booker*. Such a decision conflicts with relevant precedent of other United States courts of appeals, requiring Certiorari review.**

LIST OF ALL PARTIES

Pursuant to Supreme Court Rule 14.1, the undersigned counsel hereby certifies that the following listed persons and parties have an interest in the outcome of this case. These representations are made so the Judges of this Court may evaluate possible disqualification or recusal pursuant to the local rules of court.

Interested Persons

1. **Adam, Lynn M.**
 AUSA/Trial Counsel for Respondent
2. **Bailey, Annie**
 Co-Defendant
3. **Ekonomou, Andrew J.**
 Trial Counsel for Petitioner
4. **Evans, Honorable Orinda D.**
 United States District Court Judge
5. **Lambros, Michael G.**
 Trial Counsel for Petitioner
6. **Nystrom, Paul E., III**
 Trial Counsel for Petitioner
7. **Sadow, Steven H.**
 Appellate Counsel for Petitioner
8. **Sumner, Phyllis B.**
 AUSA/Appellate Counsel for Respondent

9. **Thompson, John F., III**
Defendant/Appellant/Petitioner
10. **Weil, Amy Levin**
AUSA/Appellate Counsel for Respondent

Interested Entities

1. **Leigh Creek Forest Products, Inc.,**
A Georgia Corporation
2. **Thompson Timber Company,**
A Georgia Corporation
3. **Weyerhaeuser,**
A Washington Corporation

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No. _____

**In The
Supreme Court of the United States**

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JOHN F. THOMPSON, III,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Eleventh Circuit
Appellate Case No. 04-10829

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PETITION FOR WRIT OF CERTIORARI

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Petitioner respectfully requests that a writ of certiorari issue to review the decision rendered by the Eleventh Circuit Court of Appeals on May 27, 2005.

The Eleventh Circuit has entered a decision in this case that squarely conflicts with other United States courts of appeals precedent on the same matter.

OPINION BELOW

The opinion by the Eleventh Circuit Court of Appeals is an unpublished opinion. Reference to the opinion is thereby limited to the following: *United States v. Thompson*, No. 04-10829, 133 Fed. Appx. 652 (11th Cir. 2005) (unpublished).

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JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

Petitioner respectfully seeks review on Certiorari from the decision rendered by the Eleventh Circuit on May 27, 2005.

Pursuant to Supreme Court Rule 10, jurisdiction in the Supreme Court is now appropriate, as the Eleventh Circuit is believed to have entered a decision that is in direct conflict with precedent of other United States courts of appeals.

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CONSTITUTIONAL PROVISION INVOLVED

Sixth Amendment – “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .”

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STATEMENT OF THE CASE

On August 27, 2003, Petitioner was found guilty in the Northern District of Georgia of counts one through fourteen as charged in the Indictment, to wit: **Count 1** – conspiracy to commit mail fraud in violation of 18 U.S.C. §§ 371, 2; **Counts 2-5** – mail fraud in violation of 18 U.S.C. §§ 1341, 2; and **Counts 6-14** – money laundering in violation of 18 U.S.C. §§ 1957, 2.

The above-referenced charges and convictions stem from a fraudulent scheme in which Petitioner, the owner and operator of timber supply businesses, conspired to use false timber scale tickets to obtain payments for phantom loads of timber from saw mill companies.

Petitioner was sentenced on January 16, 2004 to a term of 60 months imprisonment on count one and 70 months imprisonment on counts two through fourteen, to run concurrent, followed by three years supervised release on each count, to run concurrent.

A timely Notice of Appeal was filed for Petitioner on February 12, 2004 in accordance with Fed. R. App. Proc. 4(b). Jurisdiction in the Eleventh Circuit Court of Appeals was proper pursuant to 28 U.S.C. § 1291.

Petitioner's appellate brief set forth two issues for review by the Eleventh Circuit; specifically, Petitioner argued that the district court erred by granting a two-level sentencing enhancement for obstruction of justice, and the district court erred in excluding defense evidence relating to a generally accepted industry custom. While this case was

pending on appeal before the Eleventh Circuit, the Supreme Court issued its decisions in *Blakely v. Washington*, 542 U.S. 296 (2004) and *United States v. Booker*, 543 U.S. ____ (2005).

Following the Supreme Court's decision in *Blakely*, Petitioner moved to supplement his brief with the issue of whether the district court exceeded its authority in applying a sentencing enhancement when the factual basis of the enhancement was neither reflected in the jury's verdict nor admitted by Petitioner. Said motion was denied on September 2, 2004.

Petitioner then sought to have his case remanded for resentencing in light of *Booker*. The Eleventh Circuit denied the motion on May 27, 2005, in conjunction with the issuance of its Opinion denying both of the issues raised on appeal and affirming the district court.

As this Petition for Writ of Certiorari is timely submitted, the issue herein is properly before this Honorable Court and should be heard as this case departs so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

ARGUMENT FOR ALLOWANCE OF THE
WRIT

- I. THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED IN REFUSING TO CONSIDER REMANDING HIS SENTENCE IN LIGHT OF *UNITED*